

CITY OF SAN BERNARDINO

300 N. "D" Street
San Bernardino, CA 92418
Website: www.sbcity.org

Mayor Patrick J. Morris

Council Members:

Virginia Marquez
Jason Desjardins
Tobin Brinker
Fred Shorett
Chas Kelley
Rikke Van Johnson
Wendy McCammack

MINUTES
MAYOR AND COMMON COUNCIL AND
COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF SAN BERNARDINO

JOINT ADJOURNED REGULAR MEETING
JUNE 30, 2010
ECONOMIC DEVELOPMENT AGENCY
BOARDROOM

This is the time and place designated for a joint adjourned regular meeting of the Mayor and Common Council and Community Development Commission of the City of San Bernardino from the joint adjourned regular meeting of the Mayor and Common Council and Community Development Commission held at 5 p.m., Wednesday, June 23, 2010, in the Economic Development Agency Boardroom, 201 North "E" Street, San Bernardino, California.

The City Clerk has caused to be posted the order of adjournment of said meeting held on Wednesday, June 23, 2010, and has on file in the office of the City Clerk an affidavit of said posting together with a copy of said order which was posted at 10:45 a.m., Thursday, June 24, 2010, on the City Hall breezeway bulletin board.

The joint adjourned regular meeting of the Mayor and Common Council and Community Development Commission of the City of San Bernardino was called to order by Mayor/Chairman Morris at 5:11 p.m., Wednesday, June 30, 2010, in the Economic Development Agency Boardroom, 201 North "E" Street, San Bernardino, California.

Roll Call

Present: Mayor/Chairman Morris; Council Members/Commissioners Marquez, Desjardins, Brinker, Shorett, Kelley, Johnson, McCammack; City Attorney Penman, City Manager McNeely, City Clerk Clark.

Absent: None.

1. **Closed Session**

Pursuant to Government Code Section(s):

- A. Conference with legal counsel – existing litigation – pursuant to Government Code Section 54956.9(a).
- B. Conference with legal counsel – anticipated litigation – significant exposure to litigation – pursuant to subdivision (b) (1), (2), (3) (A-F) of Government Code Section 54956.9.
- C. Conference with legal counsel – anticipated litigation – initiation of litigation – pursuant to subdivision (c) of Government Code Section 54956.9.
- D. Closed Session – personnel – pursuant to Government Code Section 54957.
- E. Closed session with Chief of Police on matters posing a threat to the security of public buildings or threat to the public's right of access to public services or public facilities – pursuant to Government Code Section 54957.
- F. Conference with labor negotiator – pursuant to Government Code Section 54957.6:
 - Mid-Management
 - General
 - Management/Confidential
 - Fire Safety
 - Fire Management
 - Police Management
 - Police
- G. Conference with real property negotiator – pursuant to Government Code Section 54956.8.

2. **RES. 2010-216 - Resolution of the Mayor and Common Council of the City of San Bernardino setting the 2010 regulatory fee for the sale of fireworks.**

Council Member/Commissioner Brinker made a motion, seconded by Council Member/Commissioner Kelley, that full reading be waived and said resolution be adopted. **The motion carried and Resolution No. 2010-216 was adopted with Shorett and Johnson voting “no.”**

3. **RES. 2010-217 - Resolution authorizing extension of side letters/resolutions for the General, Middle Management, Management/Confidential and Fire Management bargaining units.**

Council Member/Commissioner Shorett made a motion, seconded by Council Member/Commission Brinker, that full reading be waived and said resolution be adopted; and that the City Manager be authorized to continue a 36-hour reduced work week and commensurate Friday closure of City Hall through August 31, 2010. **The motion carried and Resolution No. 2010-217 was adopted with McCammack voting “no.”**

4. **Budget workshop and deliberations – Fiscal Year 2010/2011 – City, Capital Improvement Program, and EDA Budgets**

Budget presentations were made by representatives from the following departments: City Manager, City Clerk, City Treasurer, City Attorney, Mayor, Common Council, and Economic Development Agency.

4A. **Revenue Action Items**

1. **Authorization to proceed with preparation of necessary documents to submit City Real Property Transfer Tax for voter approval and to secure proposals for consultants for public education and voter outreach services**
2. **Authorization to proceed with the formation of a City-wide Maintenance Assessment District and securing proposals from consultants for assessment engineering and outreach services**

Council Member/Commissioner McCammack stated that she would like something to be done to make the property transfer tax measure easier to swallow such as exemptions or a rebate.

City Attorney Penman advised that anything regarding a rebate would have to be on the ballot. He also stated that any materials used to tell the public about the measure must be strictly educational—not advocacy.

Council Member/Commissioner Brinker expressed reservations about a property transfer tax measure and a city-wide maintenance assessment district, stating he was not ready to support either idea. He stated that he would like to talk about a sales tax—a ½-cent increase in sales tax to be used specifically for fire, parks, and libraries.

Council Member/Commissioner Shorett noted that a property tax would take a 50 percent plus 1 vote to pass. He added that he did not see either item (4A1 or 4A2) passing and he did not support either one.

Mayor Morris stated that property is a special asset that people value very highly, and you can get into a very difficult conversation with the constituents on this.

Council Member/Commissioner Desjardins stated that he felt it was more fair to put the burden on people who have a little bit of money and own a home rather than sales tax, which will affect absolutely everybody including those on SSI, etc.

Most of the Council members thought the tax should be borne by the buyer, not the seller. Ms. McCammack felt that if some exemptions could be put in place it would have a better possibility of passing—that they are already paying this tax and this would just be an increase.

City Attorney Penman stated that just because something is in a City ordinance does not mean it is necessarily legal, and they would want to research it carefully to make sure it is legal.

Council Member/Commissioner Kelley stated that he could not support either one.

Cheryl Brown, NAACP, San Bernardino, CA, stated that she agreed with Council Member/Commissioner McCammack and supported a property transfer tax measure with a formula or exemptions to help people out. She did not support an increase to sales tax.

The following individuals spoke in opposition to a property transfer tax measure:

Ryan Smith, Inland Valley Association of Realtors.

Mary Rodarte, real estate broker, Westminster, CA.

Joe Bonadiman, civil engineer, San Bernardino, CA.

Jeff Stoffel, Century 21 Showcase, suggested enforcing the rules currently on the books.

Ed Neighbors, realtor, San Bernardino, CA.

Doug Shepherd, realtor, Riverside, CA.

Grace Castro, Apartment Association Greater Inland Empire.

Jose Martinez, realtor, Riverside, CA.

Joe Arnett, San Bernardino, CA.

Council Member/Commissioner Brinker made a motion, seconded by Council Member/Commissioner Marquez, that staff research a possible ½-cent increase to the City's sales tax and bring the information back to the Council at their regular meeting of July 6, 2010. **The motion carried with Kelley and McCammack voting "no."**

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Desjardins, that they also attempt to put a property transfer tax with an exemption on the November 2010 ballot. **(The vote was taken following further discussion.)**

Mayor/Chairman Morris advised that they have to be laser-like with their residents—if they have multiple items brought forward it dilutes their message. He stated they should market their best idea; however, if they have multiple items they could be seen as greedy and overreaching.

Ms. McCammack stated that she saw it as giving the residents a choice of two and maybe a chance that one will pass. She feared that if only one goes forward, it may not pass.

Mayor/Chairman Morris responded that they have to believe that something makes sense, and he thought the property transfer tax was a lost cause judging on the comments made by the speakers this evening.

The motion made by Council Member/Commissioner McCammack, seconded by Council Member/Commissioner Desjardins, **failed by the following vote: Ayes: Desjardins, McCammack. Nays: Marquez, Brinker, Shorett, Kelley, Johnson.**

3. Authorization to proceed with a Utility Cost Allocation Study to explore the feasibility of increasing utility franchise fees

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Brinker, that the City Manager be authorized to proceed with a Utility Cost Allocation Study. **The motion carried with Desjardins and Kelley voting "no."**

Relative to revenue options, Council Member/Commissioner Marquez stated that she would like to resurrect discussion regarding the privately operated impound facilities currently being operated in the city and that the matter be placed on the agenda for the July 6, 2010, meeting of the Mayor and Common Council.

4B. Presentation of FY 2010/11 Alternative Budget

There was no discussion of this item and no action was taken.

4C1. City of San Bernardino Budget Adoption – FY 2010/11

RES. 2010-221 - Resolution of the Mayor and Common Council approving and adopting the Final Budget for FY 2010/2011 and directing staff to prepare budget documentation. (4C1)

Note: No backup materials were distributed.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Brinker, that full reading be waived and that said resolution be adopted. (This budget was identified as the “Vision Budget.”)

City Attorney Penman stated that he would like the letter he submitted with his presentation to be included.

Council Member/Commissioner McCammack amended her motion, seconded by Council Member/Commissioner Brinker, that full reading be waived and that said resolution be adopted, with the inclusion of the letter from City Attorney Penman dated June 30, 2010 - Subject: Final Proposed City Attorney Office Budget for FY 2010/2011. **The motion carried unanimously.**

4D. RES. 2010-222 - Resolution of the Mayor and Common Council of the City of San Bernardino adopting the Fiscal Year 2010/2011 through 2014/2015 Capital Improvement Program.

Deputy City Attorney Empeño advised that the resolution had three exhibits, A, B, and C. The first vote would approve the resolution with Exhibit A, which is the five-year CIP for all projects except the five projects in which four of the Council members had conflicts of interest.

The second vote would be to adopt the resolution with Exhibit B, and Council Members Marquez and Desjardins would abstain because they have a real property interest in the projects listed in Exhibit B.

Last, the Council would vote to adopt the resolution with Exhibit C, and Council Members Brinker and Johnson would abstain because they have a real property interest in the projects listed in Exhibit C.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Brinker, that full reading be waived and that said resolution be adopted with Exhibit A. **Resolution No. 2010-222 with Exhibit A was adopted unanimously.**

Council Members/Commissioners Marquez and Desjardins stated they had a conflict with the projects listed in Exhibit B and left the Council table, returning after the vote was taken.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Brinker, that full reading be waived and that said resolution be adopted with Exhibit B. **Resolution No. 2010-222 with Exhibit B was adopted with Marquez and Desjardins abstaining.**

Council Members/Commissioners Brinker and Johnson stated they had a conflict with the projects listed in Exhibit C and left the Council table, returning after the vote was taken.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Shorett, that full reading be waived and that said resolution be adopted with Exhibit C. **Resolution No. 2010-222 with Exhibit C was adopted with Brinker and Johnson abstaining.**

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Brinker, that the Director of Finance be authorized to incorporate the completed FY 2010/11 Capital Improvement Program into the final FY 2010/11 budget. **The motion carried unanimously.**

4E. Economic Development Agency Budget Adoption – Fiscal Year 2010/2011

Following presentation of the EDA budget by Interim Executive Director Marzullo, the following resolutions were adopted.

Note: Resolutions 4E1, 4E2, and 4E3 were not distributed with the backup materials.

It was noted by staff that Council Member/Commissioner McCammack would need to abstain from voting on Item 4E5 because she owns property within the Uptown Redevelopment Project Area, and that Council Members/Commissioners Marquez and Desjardins would need to abstain on Item 4E6 because they own property within the Central City Projects Redevelopment Project Area.

RES. 2010-218 - Resolution of the Mayor and Common Council of the City of San Bernardino, California, authorizing the funding of various City of San Bernardino fiscal year 2010-2011 public improvement expenditures and making findings and determinations pursuant to Health & Safety Code Sections 33445 and 33445.1 as to the benefit to the various redevelopment project areas for undertaking public improvements in connection with these various City expenditures. (4E1)

RES. 2010-219 - Resolution of the Mayor and Common Council of the City of San Bernardino, California approving the execution and delivery of an Agency-City 2010 Loan Agreement and 2010-2011 Note of the City of San Bernardino ("City") payable to the Redevelopment Agency of the City of San Bernardino ("Agency") in the principal amount equal to \$1,332,925 for the repayment of the \$1,310,000 principal amount of the 2009-2010 Note payable from the City to the Agency. (4E2)

RES. 2010-220 - Resolution of the Mayor and Common Council of the City of San Bernardino, California approving a Master Services Agreement for fiscal year 2010-2011 by and between the Redevelopment Agency of the City of San Bernardino ("Agency") and the City of San Bernardino ("City") and authorizing the Agency's payment to the City for the performance of certain functions by City Departments for the benefit of the Agency. (4E3)

RES. CDC/2010-34 - Resolution of the Community Development Commission of the City of San Bernardino, California, approving the Economic Development Agency's budget for the fiscal year 2010-2011 with any such amendments, changes and modifications that may be specifically authorized by said Commission, except for those portions of certain budget lines which are related to the Central City Projects Redevelopment Area and the Uptown Redevelopment Project Area. (4E4)

RES. CDC/2010-41 - Resolution of the Community Development Commission of the City of San Bernardino, California, approving the Economic Development Agency's budget for those portions of certain budget lines which are related to the Uptown Redevelopment Project Area for the fiscal year 2010-2011 with any such amendments, changes and modifications that may be specifically authorized by said Commission. (4E5)

RES. CDC/2010-40 - Resolution of the Community Development Commission of the City of San Bernardino, California, approving the Economic Development Agency's budget for those portions of certain budget lines which are related to the Central City Projects Redevelopment Project Area for the fiscal year 2010-2011 with any such amendments, changes and modifications that may be specifically authorized by said Commission. (4E6)

RES. CDC/2010-35 - Resolution of the Community Development Commission of the City of San Bernardino, California, authorizing the funding of various City of San Bernardino fiscal year 2010-2011 public improvement expenditures and making findings and determinations pursuant to Health & Safety Code Sections 33445 and 33445.1 as to the benefit to the various redevelopment project areas for the undertaking of various public improvements. (4E7)

RES. CDC/2010-36 - Resolution of the Community Development Commission of the City of San Bernardino, California, approving amendments to Exhibits "A" and "B", deletion of certain pages and the addition of other pages to Exhibit "C" of the Personnel Policies and Procedures for all employees of the City of San Bernardino Economic Development Agency. (4E8)

RES. CDC/2010-37 - Resolution of the Community Development Commission of the City of San Bernardino, California, approving the Economic Development Agency's analysis and determination of the appropriateness of the planning and administration expenditures of the Low- and Moderate-Income Housing Fund for the fiscal year 2010-2011 Agency Budget. (4E9)

RES. CDC/2010-38 - Resolution of the Community Development Commission of the City of San Bernardino approving a Master Services Agreement for fiscal year 2010-2011 between the Redevelopment Agency of the City of San Bernardino and the City of San Bernardino authorizing the Agency's payment to the City for the performance of certain functions by City Departments for the benefit of the Agency. (4E10)

RES. CDC/2010-39 - Resolution of the Community Development Commission of the City of San Bernardino approving the execution and delivery of an Agency-City 2010 Loan Agreement and 2010-2011 Note of the City of San Bernardino ("City") payable to the Redevelopment Agency of the City of San Bernardino ("Agency") in the principal amount equal to \$1,332,925 for the repayment of the \$1,310,000 principal amount of the 2009-2010 Note from the City to the Agency. (4E11)

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Johnson, that full reading be waived and that resolutions 4E1 through 4E11 be adopted except for 4E5 and 4E6. **The motion carried and Mayor and Council Resolution Nos. 2010-218, 2010-219, and 2010-220 and Community Development Commission Resolution Nos. CDC/2010-34 through CDC/2010-39 were adopted with Kelley voting "no."**

Council Members/Commissioners Marquez and Desjardins declared a conflict on Item No. 4E6 because they own property within the Central City Projects Redevelopment Project Area.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Johnson, that full reading be waived and that said resolution 4E6 be adopted. **Community Development Commission Resolution No. CDC/2010-40 was adopted with Kelley voting "no" and Marquez and Desjardins abstaining.**

Council Member/Commissioner McCammack declared a conflict on Item No. 4E5 because she owns property within the Uptown Redevelopment Project Area.

Council Member/Commissioner Brinker made a motion, seconded by Council Member/Commissioner Shorett, that full reading be waived and that said resolution 4E5 be adopted. **Community Development Commission Resolution No. CDC/2010-41 was adopted with Kelley voting "no" and McCammack abstaining.**

5. Reconsider discussion of Charter Measures

Council Member/Commissioner Marquez stated that she had looked at the study done by Management Partners and had done other research wherein she had found that no major U.S. city outside of California has an elected city attorney; therefore, she felt that the City does need a change to its charter regarding some of its elected officials.

Council Member/Commissioner Marquez made a motion, seconded by Council Member/Commissioner Brinker, that a proposed charter amendment be placed on the November 2010 ballot to change the city attorney, city clerk, and city treasurer positions from elected positions to appointed positions.

Council Member/Commissioner Kelley made a substitute motion, seconded by Council Member/Commissioner McCammack, that a proposed charter amendment be placed on the November 2010 ballot to change the city attorney, city clerk, city treasurer, and mayor positions from elected positions to appointed positions. **(The vote was taken following further discussion.)**

Discussion ensued regarding various forms of government such as those with a strong mayor or a strong city manager, and the roles of the city attorney, city clerk, and city treasurer.

City Attorney Penman expressed his thoughts on the matter and his reasons for believing that the city attorney position should remain an elected position. He stated that he thought this action was directed at him personally and suggested that the City Clerk and City Treasurer positions be deleted from the proposed Charter amendment.

The following individuals spoke in opposition to the proposed charter change for the positions of city attorney, city clerk, and city treasurer:

Roger Henderson, San Bernardino, CA.

Amelia Lopez, San Bernardino, CA.

Laurie Stalnaker, San Bernardino property owner, who suggested that the mayor position be part-time and elected for two-year terms.

John Valdivia, San Bernardino, CA.

The following individuals spoke in support of the proposed charter change for the positions of city attorney, city clerk, and city treasurer:

Cheryl Brown, San Bernardino, CA.

Pastor Ray Turner, member of San Bernardino Charter Reform, who stated he has never discussed charter changes with the Mayor as mentioned by a previous speaker.

Joe Arnett, San Bernardino, CA, stated that if the mayor position remains the same, at the very least they should take away his veto and tie-breaking powers.

The substitute motion made by Council Member/Commissioner Kelley, seconded by Council Member/Commissioner McCammack **failed by the following vote: Ayes: Desjardins, Kelley, McCammack. Nays: Marquez, Brinker, Shorett, Johnson.**

Council Member/Commissioner Desjardins made a substitute motion, seconded by Council Member/Commissioner Kelley, that the Council consider a charter amendment to make the mayor position a part-time position, elected for two-year terms, who would share staff with the City Manager or the Council. **The motion failed by the following vote: Ayes: Desjardins, Kelley, McCammack. Nays: Marquez, Brinker, Shorett, Johnson.**

Council Member/Commissioner McCammack made a substitute motion, seconded by Council Member/Commissioner Kelley, that a Charter Reform Commission be created to discuss the complete charter. **The motion failed by the following vote: Ayes: Desjardins, Kelley, McCammack. Nays: Marquez, Brinker, Shorett, Johnson.**

The original motion made by Council Member/Commissioner Marquez, seconded by Council Member/Commissioner Brinker, that a proposed charter amendment be placed on the November 2010 ballot to change the city attorney, city clerk, and city treasurer positions from elected positions to appointed positions **carried by the following vote: Ayes: Marquez, Brinker, Shorett, Johnson. Nays: Desjardins, Kelley, McCammack.**

City Attorney Penman advised that since this affected his position he would have to declare a conflict and all documents relative to this measure that would normally be prepared and/or reviewed by his office would need to be prepared and reviewed by an outside attorney.

6. **Public Comments**

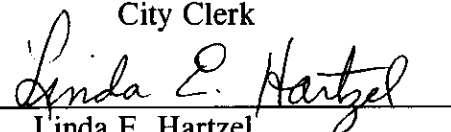
Jason Desjardins, speaking from the public podium, stated that the Council should be cognizant of the fact that the decisions they make affect some of the residents in the City in ways they may not even be aware of.

36. **Adjournment**

At 10:26 p.m. the meeting adjourned. The next joint regular meeting of the Mayor and Common Council/Community Development Commission is scheduled for 1:30 p.m., Tuesday, July 6, 2010.

RACHEL G. CLARK

City Clerk

By: 
Linda E. Hartzel
Deputy City Clerk